

CITY-COUNTY GENERAL ORDINANCE NO. 108 , 1976

METROPOLITAN DEVELOPMENT COMMISSION
DOCKET NO. 76-AO-2

COMMERCIAL SPECIAL EXCEPTIONS ORDINANCE

OF MARION COUNTY, INDIANA

ZONING ORDINANCE 76-AO-2

METROPOLITAN DEVELOPMENT COMMISSION

1976

Officially adopted 9/13/76.

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DOCKET NO. 76-AO-2

AN ORDINANCE to amend Marion County Council Ordinance No. 8-1957, as amended, the Zoning Ordinance for Marion County, Indiana, and fixing a time when the same shall take effect.

WHEREAS, a single planning and zoning authority was established in Marion County by I.C. 1971, 18-7-2, the problems created by expanding urbanization having made the unification of the planning and zoning functions a necessity in any county containing a first class city in order to insure the health, safety, morals, economic development and general welfare of the area; and

WHEREAS, certain powers relative to the zoning and districting of land are granted to the Metropolitan Development Commission and City-County Council of Indianapolis and of Marion County by I.C. 1971, 18-7-2 and I.C. 1971, 18-4-10; and

WHEREAS, the Metropolitan Development Commission has established a COMPREHENSIVE OR MASTER PLAN OF MARION COUNTY, INDIANA, consisting of various segments, including a LAND USE MAP OF MARION COUNTY, INDIANA, and a COMPREHENSIVE GENERAL LAND USE PLAN FOR MARION COUNTY, INDIANA, adopted by Resolutions 62-CPS-R-2 and 65-CPS-R-1, respectively, and subsequently amended, pursuant to said statutes; and

WHEREAS, the Metropolitan Development Commission is empowered, after such comprehensive plan establishment, to recommend to the City-County Council an ordinance or ordinances for the zoning or districting of lands within the County to the end that adequate light, air, convenience of access and safety from fire, flood and other danger may be secured; that congestion in the public streets may be lessened or avoided; that property values may be preserved; that the public health, safety, comfort, morals, convenience and general welfare may be promoted; and

WHEREAS, pursuant to I.C. 1971, 18-7-2-38, for any one or more of such purposes, the zoning ordinance or amendments thereto, in addition to dividing the entire County into districts of such kind, character, number, shape and area as will best promote the objectives of the comprehensive plan, classifying, regulating and limiting the height, area, bulk and floor space of structures and the area surrounding structures, and providing performance standards and standards of population density, --- may regulate the use and intensity of use of land and lot areas, and classify land uses according to agricultural, industrial, commercial, residential and any other reasonable uses and subdivisions thereof; and

WHEREAS, because of the exceptional land use characteristics and locational impacts of certain commercial uses which, if inappropriately located within COMMERCIAL ZONING DISTRICTS, may have a deleterious effect upon other land uses and values within the County, it is recognized that the further classification, sub-classification or subdivision and regulation of such uses is essential -- if property values within Marion County are to be preserved and the public health, safety, comfort, morals, convenience and general welfare promoted; and

WHEREAS, Boards of Zoning Appeals in Marion County are empowered to grant special exceptions pursuant to I.C. 1971, 18-7-2,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA

Section 1. That Marion County Council Ordinance No. 8-1957 adopted by the Marion County Council on March 28, 1957, and all zoning ordinances adopted as parts thereof or amendments thereto, pursuant to I.C. 1971, 18-7-2 and I.C. 1971, 18-4-10, be amended by the addition of the following provisions:

A. CLASS 1 REGULATED COMMERCIAL USES

The following uses of any land, structure, premises or part thereof are hereby classified and designated as "CLASS 1 REGULATED COMMERCIAL USES":

1. AMUSEMENT ARCADE; or similar amusement, recreation or entertainment center or facility (except any such arcade, center or facility having not more than four (4) amusement machines).
2. MESSAGE PARLOR, SERVICE OR FACILITY (excepting any therapeutic, medical or surgical services or facilities of a regularly licensed hospital or dispensary, or the professional services of a physician, osteopath or chiropractor duly registered with and licensed by the state).
3. ADULT BOOKSTORE; or similar adult facility for the display, distribution, barter, rental or sale of printed matter, pictures, films, graphic or other materials, including but not limited to ADULT "MUSEUM".
4. ADULT THEATER; ADULT AMUSEMENT, RECREATION OR ENTERTAINMENT CENTER OR FACILITY (except those establishments which only infrequently present such films, theatrical productions, performances, recitals, displays, printed matter or other entertainment as would require the exclusion of minors pursuant to state law for reasons other than the sale or consumption of alcoholic beverages on the premises).

B. SPECIAL REGULATIONS - CLASS 1 REGULATED COMMERCIAL USES

In whatever COMMERCIAL or other ZONING DISTRICT within Marion County the above designated CLASS 1 REGULATED COMMERCIAL USES are classified or included as permitted uses, such uses shall be subject to the following SPECIAL REGULATIONS -- which shall be in addition to the applicable ZONING DISTRICT'S standards and requirements and, in case of any conflict, the stricter shall control:

1. No use of any land, structure, premises or part thereof as a CLASS 1 REGULATED COMMERCIAL USE, as designated in subsection 1, A of this ordinance, shall be permitted except upon the grant of a SPECIAL EXCEPTION by the BOARD OF ZONING APPEALS to permit such use.
2. No use of any land, structure, premises or part thereof as a CLASS 1 REGULATED COMMERCIAL USE, as designated in subsection 1, A of this ordinance, shall be permitted if any portion of the perimeter

of the subject lot is located within five hundred (500) feet of a residential ZONING DISTRICT; HISTORIC PRESERVATION ZONING DISTRICT; MARKET SQUARE ZONING DISTRICT; PARK (PK-1 or PK-2) ZONING DISTRICT; UNIVERSITY QUARTER ZONING DISTRICT; SPECIAL USE ONE (SU-1 CHURCHES), SPECIAL USE TWO (SU-2 SCHOOLS), SPECIAL USE THIRTY-SEVEN (SU-37 LIBRARY) or SPECIAL USE THIRTY EIGHT (SU-38 COMMUNITY CENTER) ZONING DISTRICT; or the perimeter of any public or private school site. (If such CLASS 1 REGULATED COMMERCIAL USE is a part of or included within an integrated commercial center or complex, the perimeter of the portion thereof or leased space occupied by such CLASS 1 REGULATED COMMERCIAL USE shall be deemed the lot perimeter, for purposes of the above distance computation and as required for subsection 1, C, 2b of this ordinance).

C. GRANT OF SPECIAL EXCEPTIONS TO PERMIT CLASS 1 REGULATED COMMERCIAL USES

The BOARD OF ZONING APPEALS is hereby authorized to grant SPECIAL EXCEPTIONS to permit CLASS 1 REGULATED COMMERCIAL USES, subject to the following requirements:

1. A petition for SPECIAL EXCEPTION to permit any CLASS 1 REGULATED COMMERCIAL USE shall be filed with the BOARD OF ZONING APPEALS in accordance with the BOARD's rules of procedure.

In addition to the site plan and area map filing requirements of the BOARD's rules of procedure or SPECIAL EXCEPTION petition forms, the petitioner shall file with the SPECIAL EXCEPTION petition:

- a. An area map, drawn to scale, indicating the existing ZONING DISTRICT classifications of all land within five hundred (500) feet of the perimeter of the subject lot and any public or private school sites located within such distance.
- b. Proposed detailed findings of fact in support of the four (4) determinations by the BOARD (hereinafter specified in subsection 1, C, 2 of this ordinance), required for the grant of SPECIAL EXCEPTION.

The petition, or evidence presented to the BOARD at the public hearing, may additionally include any pertinent exhibits, such as photographs depicting the subject site or other land uses and properties in the subject area; neighborhood or community economic, social, land use or environmental impact statements; or other relevant evidence.

Notice of the public hearing upon the SPECIAL EXCEPTION petition, by publication and to adjacent property owners, shall be in accordance with the BOARD'S rules of procedure.

2. A SPECIAL EXCEPTION shall be granted following public hearing upon the petition, upon the BOARD'S determination that:
 - a. The proposed use will not be injurious to the public health, safety, morals, convenience or general welfare;
 - b. The perimeter of the subject lot is not located within five

hundred (500) feet of any residential ZONING DISTRICT; HISTORIC PRESERVATION ZONING DISTRICT; MARKET SQUARE ZONING DISTRICT; PARK (PK-1 or PK-2) ZONING DISTRICT; UNIVERSITY QUARTER ZONING DISTRICT; SPECIAL USE ONE (SU-1 CHURCHES), SPECIAL USE TWO (SU-2 SCHOOLS), SPECIAL USE THIRTY-SEVEN (SU-37 LIBRARY) OR SPECIAL USE THIRTY-EIGHT (SU-38 COMMUNITY CENTER) ZONING DISTRICT; or the perimeter of any public or private school site.

- c. The proposed use will not injure or adversely affect the adjacent area or property values therein; and
 - d. The proposed use will be consistent with the character of the DISTRICT, land use authorized therein and the metropolitan comprehensive plan.
3. The grant of SPECIAL EXCEPTION shall be subject to the following requirements:
- a. The proposed use shall conform to all performance standards of the applicable ZONING DISTRICT.
 - b. The proposed use shall conform to all development standards of the applicable ZONING DISTRICT.
 - c. The proposed use shall conform to all conditions attached to the grant of SPECIAL EXCEPTION by the BOARD. All such conditions shall be imposed by the BOARD to ensure compliance with standards a, c and d of subsection 1, C, 2 above. Such conditions may include any reasonable site, development, operational and performance standards, requirements and restrictions. The grant of SPECIAL EXCEPTION may be for a limited period of time, as specified by the BOARD.

D. EXISTING NONCONFORMING USES - AMORTIZATION

EXISTING CLASS 1
REGULATED COMMERCIAL
USES; CONFORMITY
WITH REGULATIONS
AND STANDARDS OF THIS
ORDINANCE OR AMORTIZATION
REQUIRED BY JANUARY 1, 1978

- 1. ALL CLASS 1 REGULATED COMMERCIAL USES, as designated and enumerated in subsection 1,A of this ordinance, existing in any ZONING DISTRICT within Marion County on the effective date of this ordinance:
 - a. shall conform to all requirements and standards of subsections 1, B and C of this ordinance, including the requirement of obtaining a grant of SPECIAL EXCEPTION to permit such CLASS 1 REGULATED COMMERCIAL USE, on or before January 1, 1978, or
 - b. such use shall be amortized and terminated upon such date, and all use of the land, structure or premises thereafter shall be in accordance with permitted land uses and regulations of the applicable ZONING DISTRICT.

E. DEFINITIONS

For purposes of this ordinance, the following definitions shall be applied:

1. ADULT - prohibited by state law from being open to the general public and, pursuant to such law, excluding any minor (for reasons other than the sale or consumption of alcoholic beverages on the premises) from the customers, patrons, clients and persons to whom the sales, services or facilities of the use are offered or available, or from its premises.
2. AMUSEMENT MACHINE - any machine or device designed or modified to be operated by any coin, coins or token, or for the operation of which a charge is made, for the purpose of providing amusement. Such a machine or device used exclusively for the vending of merchandise of a tangible nature shall not be deemed an amusement machine.
3. BOARD OF ZONING APPEALS - the Board of Zoning Appeals having territorial jurisdiction of the subject property pursuant to I.C. 1971, 18-7-2.

Section 2. SEVERABILITY

If any section, subsection, paragraph, subparagraph, clause, phrase, word, provision or portion of this ordinance shall be held to be unconstitutional or invalid by any court of competent jurisdiction, such holding or decision shall not affect or impair the validity of this ordinance as a whole or any part thereof, other than the section, subsection, paragraph, subparagraph, clause, phrase, word, provision or portion so held to be unconstitutional or invalid.

Section 3. That an emergency exists for the passage of this ordinance and the same shall be in full force and effect from and after its passage.

CITY-COUNTY COUNCIL OF INDIANAPOLIS
AND OF MARION COUNTY, INDIANA

Date September 13, 1976

Attest: Beverly S. Rippy
(Clerk)

Beurt SerVaas
President (or Presiding Officer)